

The *amicus curiae Brief*, which is different than all of the others proffered to the court in this case, will serve a useful *purpose* by providing a voice without oral argument for those not represented completely or alternatively, not at all.

The Commonwealth of Virginia is dealing with the same immigration problems as the states north of the Mexican border, and the Old Dominion is experiencing equal opposition from a renegade United States Department of Justice that is long on litigation to preclude the enforcement of immigration laws, but short on obedience to the Constitution of the United States. The reality of the situation is that other states that are trying to find solutions to the immigration problem dealing with illegal aliens, and America itself, will be affected by the precedent set by the final outcome of this constitutional litigation in the *first instance*.

Mr. Parker's Brief presents unique information beyond that of counsel, and others, which is *not a repetition* of the arguments contained in the pleadings by the counsel of record for the parties, nor a repetition of any of the arguments set forth in the

amicus curiae Briefs accepted by this court.

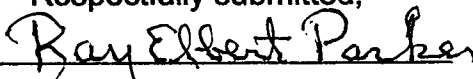
The Brief attached hereto is brief in that it does not burden the judges assigned to this case with lengthily pleadings, a voluminous citations of court cases and an array of scattering arguments that suggest a solution looking for a problem.

The *purpose* of this brief is to offer a different perspective on the case and to serve a different function than the party Briefs, as well as presenting a different point of view *as a friend of the court*, to assist in shaping the judicial decision.

WHEREFORE, the petitioner moves this court to accept his brief as a permanent part of the official record in this case and that the issue proffered to the court is the crux of the matter to be resolved on appeal.

POINTS: As stated above.

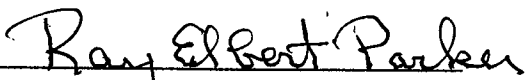
AUTHORITIES: As stated above.

Respectfully submitted,
/s/ 
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CERTIFICATE OF SERVICE

I, RAY ELBERT PARKER, hereby certify *under oath* that a true copy of the motion, certificate of service, prepared Order and Brief has this 5th day of October, 2010, been mailed, postage prepaid, to the following: John J. Bouma, Esq., on behalf of Robert A. Henry, Esq.; Joseph G. Adams, Esq., *SNELL & WILLMER, L. L. P.*, One Arizona Center, 400 East Van Buren, Phoenix, Arizona 85004 – 2202; and Joseph A. Kanefield, Esq., Office of the Governor Janice K. Brewer, 1700 West Washington, 9th Floor, Phoenix, Arizona 85007, counsel for defendants/appellants.

And Tony West, Esq., Assistant United States Attorney General on behalf of Dennis R. Burke, Esq.; Arthur R. Goldberg, Esq.; Vam Chilakman, Esq., and Joshua Wilkenfeld, Esq., UNITED STATES DEPARTMENT OF JUSTICE, Civil Division, 20 Massachusetts Avenue, NW, Washington, D. C. 20530 , counsel for plaintiff – appellee.

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WASHINGTON Post

No opt-out for immigration enforcement

FRIDAY, OCTOBER 1, 2010

REVERSAL FOR LOCAL OFFICIALS

Not participating had been cited as an option

BY SHANKAR VEDANTAM

The Obama administration is making it virtually impossible for Arlington County, the District and other jurisdictions to refuse to participate in a controversial immigration enforcement program that uses fingerprints gathered by local law enforcement agencies to identify illegal immigrants.

Participation in the program, called Secure Communities, was widely believed to be voluntary — a perception reinforced by a Sept. 7 letter sent to Congress by Homeland Security Secretary Janet Napolitano. This week, Arlington joined the District, San Francisco and Santa Clara County, Calif., in voting to opt out of the program.

But the Immigration and Customs Enforcement agency now

says that opting out of the program is not a realistic possibility — and never was.

Secure Communities, which operates in 32 states and will soon be running nationwide, relies on the fingerprints collected by local authorities when a person is charged with anything from a traffic violation to murder. The fingerprints are sent to state police, and then to the FBI, for criminal background checks.

Under the two-year-old program, ICE is able to access the information sent to the FBI. If the fingerprint matches that of someone known to be in the country illegally, ICE orders the immigrant detained as a first step toward deportation.

Tens of thousands of undocumented immigrants have been removed from the United States under the program, which the administration has made a centerpiece of its effort to focus immigration enforcement on criminals. But those deportees include many thousands who have committed minor offenses or no crimes at all, which has made the

SECURE COMMUNITIES ON B5

Opt-out of immigration enforcement poses problems

SECURE FROM B1

program a source of increasing concern to immigrant rights groups.

A senior ICE official, speaking on the condition of anonymity because he was not authorized to talk about the involuntary nature of the program, said: "Secure Communities is not based on state or local cooperation in federal law enforcement. The program's foundation is information sharing between FBI and ICE. State and local law enforcement agencies are going to continue to fingerprint people and those fingerprints are forwarded to FBI for criminal checks. ICE will take immigration action appropriately."

The only way a local jurisdiction could opt out of the program is if a state refused to send fingerprints to the FBI. Since police and prosecutors need to know the criminal histories of people they arrest, it is not realistic for states to withhold fingerprints from the FBI — which means it is impossible to withhold them from ICE.

The revelation that the program is not really optional stunned Arlington County Board member J. Walter Tejada (D), who spearheaded a months-long effort

to evaluate Secure Communities with residents, lawyers and county officials. "It is most frustrating," he said. "Communities were researching this. Attorneys looked at it pro bono. All of that could have been avoided. People spent all summer thinking about this."

Tejada pointed to Napolitano's recent letter to Congress, in which she wrote, "A local law enforcement agency that does not wish to participate in the Secure Communities deployment plan must formally notify the Assistant Director for the Secure Communities program, David Venturella." In a briefing paper, ICE also said that if a city or county did not want to participate, the agency was amenable to "removing the jurisdiction from the deployment plan."

The senior ICE official said local authorities could opt out of learning the specific reason why immigration authorities wanted someone detained. But they would still have to detain the individual.

"If what you say is true, it is extremely disappointing because it means the District of Columbia now has a blurred rather than a bright line between what the Metropolitan Police Department is doing and what immigration officers are doing," said D.C. Council mem-

ber Jim Graham (D-Ward 1), who recently voted with the rest of the council to opt out of the program. "We had a bright line, and that has increased trust and confidence in our police among immigrant communities. That will now vanish."

Federal immigration authorities have argued that because Secure Communities does not require local police to probe anyone's immigration status, the program will not lead to racial profiling. But critics disagreed.

"It makes the local police department an arm of the federal immigration authority in a way that has not been true in the District of Columbia," Graham said. "It also distracts scarce police resources — they have to hold people until ICE can get to them. We want those resources devoted to crime-fighting."

While many law enforcement agencies across the country have embraced Secure Communities, Graham's concerns have been echoed by some sheriffs and police chiefs. They fear the program will make undocumented immigrants unwilling to report crimes.

"In a domestic violence case, it is not that unusual for police to arrive and arrest both parties and let the evidence get sorted out

later" at the police station, said Eileen Hirst, chief of staff to San Francisco Sheriff Michael Hennessey, who has been fighting for months to get his county removed from Secure Communities.

Officers might fingerprint both parties to see whether they have criminal records, she said. If the domestic violence victim is an unauthorized immigrant, ICE can tell police to detain him or her.

"By the time the details get sorted out, he or she can be on an ICE detainer and on the way to a detention facility," Hirst said. "This can make people reluctant to call police when they should."

Secure Communities is primarily designed to target and deport violent criminals, but the immigration agency says the program also will identify people who crossed the border illegally in the past, visa violators and fugitives.

"They may not have a criminal history, but they are a priority for ICE as well," agency spokesman Richard Rocha said. "Those individuals are removable aliens. Secure Communities allows us to remove and prioritize aliens so we can remove the most egregious offenders first, but others as resources permit."

vedantams@washpost.com

**IN THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,)

)
)
Plaintiff – Appellee)

v.)

) **Case No. 10 - 16645**
)

STATE OF ARIZONA and JANICE K.)

BREWER, Governor of the State of Arizona,)

in her official capacity,)

)
)
Defendant – Appellant)
)

ORDER

Petitioner, *Ray Elbert Parker's Motion for leave to file an Amicus Curiae Brief*

having come before this honorable court, and any opposition by the parties having been

reviewed and considered, it is hereby ordered that the same be and is hereby, granted;

and it is,

FURTHER ORDERED, that petitioner's *amicus curiae* Brief be included as a permanent part of the official record in this appeal.

/s/ _____
UNITED STATES APPELLATE JUDGE

/s/ _____
UNITED STATES APPELLATE JUDGE

/s/ _____
UNITED STATES APPELLATE JUDGE

October 5, 2010

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

Post Office Box 193939
San Francisco, California 94119 – 3939

CERTIFIED MAIL RETURN REQUESTED

Re: U. S. A. v. State of Arizona et. al., CA No. 10 – 16645

ATTENTION: Clerk of the Court:

Please find attached hereto a copy of the *Amicus Curiae Motion for Leave to File Brief In Support of the State of Arizona et. al. Reversal* and the required seven (7) copies of the Brief pursuant to instructions from your office by phone on Monday, October 4, 2010.

Your prompt and immediate attention to this matter will be appreciated.

RECEIVED
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

OCT 07 2010

FILED _____
DOCKETED _____ DATE _____ INITIAL _____

Respectfully submitted,

/s/ Ray Elbert Parker

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Enclosures: (1) Copy of Motion for Leave to File Brief.
(2) Seven (7) copies of the Brief